

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Eagle West Communications, Inc.
Operator of Cable Television System
Community Unit ID: AZ0342
Physical System ID: 002292
Mesa, Arizona

File Number: EB-06-SD-177

NAL/Acct. No.: 200732940001

FRN: 0004979126

MEMORANDUM OPINION AND ORDER

Adopted: December 7, 2007

Released: December 11, 2007

By the Associate Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this *Memorandum Opinion and Order*, issued pursuant to Section 405 of the Communications Act of 1934, as amended (“Act”),¹ and Section 1.106 of the Commission’s rules,² we deny a Petition for Reconsideration (“*Petition*”) filed on March 5, 2007, by Eagle West Communications, Inc. (“Eagle West”), of a *Forfeiture Order*,³ issued by the Western Region, Enforcement Bureau (“Region”), imposing an eight thousand dollar (\$8,000) monetary forfeiture penalty against Eagle West for willful and repeated violation of Section 11.35 of the Commission’s Rules (“Rules”).⁴ The noted violation involves failing to ensure the operational readiness of the Emergency Alert System (“EAS”) equipment in the Eagle West cable system in Mesa, Arizona. For the reasons discussed below, we deny the *Petition*.

II. BACKGROUND

2. On May 16, 2005, an agent of the Enforcement Bureau’s San Diego Office attempted to inspect the operational readiness of the EAS equipment installed at Eagle West’s cable television system serving Mesa, Arizona. During this inspection, the San Diego agent found that the system’s EAS equipment, including both the encoder and the decoder, had been purchased and was delivered to the cable system’s head-end, but was never installed. The agent orally warned the cable system’s Senior Technician that the EAS equipment must be installed and made operational as soon as possible.

3. On June 5, 2006, the San Diego agent returned to the Eagle West cable system serving Mesa, Arizona, and attempted to inspect the operational readiness of the EAS equipment. The agent spoke with a manager from Eagle West who acknowledged to the agent that Eagle West had still not installed or made operational the EAS equipment at its Mesa, Arizona, system. Upon returning to the San Diego Office, the agent reviewed the Commission’s records and determined that several smaller cable systems

¹ 47 U.S.C. § 405.

² 47 C.F.R. § 1.106.

³ *Eagle West Communications, Inc.*, 22 FCC Rcd 2085 (EB 2007) (“*Forfeiture Order*”).

⁴ 47 C.F.R. § 11.35.

in Arizona owned by Eagle West were granted temporary waivers of EAS requirements.⁵ However, there is no record that a waiver was requested or granted for the Eagle West cable system serving Mesa, Arizona.

4. On November 8, 2006, the San Diego Office issued a Notice of Apparent Liability for Forfeiture (“NAL”) in the amount of \$8,000 to Eagle West, finding Eagle West apparently willfully and repeatedly violated Section 11.35 of the Rules by failing to install and make operational EAS equipment in its cable system serving Mesa, Arizona.⁶ Despite repeated contacts by the San Diego Office, Eagle West failed to file a response to the NAL. Consequently, on February 2, 2007, the Region released the *Forfeiture Order*, and imposed an \$8,000 forfeiture on Eagle West for its willful and repeated violation of Section 11.35 of the Rules. In its *Petition*, Eagle West argues that the forfeiture be set aside because Eagle West had taken action to install the EAS equipment at issue and ensure its operation.

III. DISCUSSION

5. Reconsideration is appropriate only where the petitioner either demonstrates a material error or omission in the underlying order or raises additional facts not known or not existing until after the petitioner’s last opportunity to present such matters.⁷ A petition for reconsideration that reiterates arguments that were previously considered and rejected will be denied.⁸

6. As part of its *Petition*, Eagle West attaches a letter it sent to the San Diego Office after it received the *Forfeiture Order*. In the letter, Eagle West states that the EAS equipment the San Diego agent saw at the headend was not EAS equipment to be used with the cable system. Eagle West also states that the EAS equipment “has been installed and operational for some time” although Eagle West does acknowledge that it has had several problems with the EAS equipment’s printer and character generator. Finally, Eagle West states that the San Diego agent should come to the Eagle West corporate office in Mesa, Arizona, during the next inspection and he “will see that we have in fact taken care of this problem a long time ago.” Because of the statements in this letter, Eagle West argues, in its petition, that the forfeiture assessed by the Region is both “erroneous and premature” and should be set aside. We disagree.

7. According to the facts detailed in the NAL, as well as the investigative case report, the San Diego agent inspected the Eagle West cable system office for Mesa, Arizona, and the headend on May 16, 2005, and found no EAS equipment. The senior technician accompanying the San Diego agent had no explanation as to why the EAS equipment was not installed. On June 5, 2006, the San Diego agent again inspected the Eagle West cable system office for Mesa, Arizona, and during this visit the company’s CEO acknowledged to the agent that the EAS equipment had not been installed or made operational for the Mesa, Arizona, system. Eagle West’s *Petition* provides no evidence to refute these facts. As to Eagle West’s

⁵ See *Report and Order, Amendment of Part 11 of the Commission’s Rules Regarding the Emergency Alert System*, 17 FCC Rcd 4055, 4083 (2002) (the Commission will continue to grant waivers of the EAS rules to small cable systems on a case-by-case basis upon a showing of financial hardship); *Request for Waiver of Section 11.11(a) of the Commission’s Rules*, 17 FCC Rcd 20108 (EB 2002) (Several Eagle West cable systems granted 36 month EAS waivers in Arizona and New Mexico, until October 2005; no waiver was requested or granted for the Eagle West Mesa, Arizona, system); *Public Notice: EAS Waiver Extensions Granted To Very Small Cable Systems*, DA 06-1373, 2006 WL 1826176 (rel. July 3, 2006) (no EAS waivers extensions for any Eagle West cable systems requested or granted).

⁶ *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200732940001 (Enf. Bur., Western Region, San Diego Office, released November 8, 2006).

⁷ See 47 C.F.R. § 1.106(c); *EZ Sacramento, Inc.*, 15 FCC Rcd 18257, (EB 2000), citing *WWIZ, Inc.*, 37 FCC 685, 686 (1964), *aff’d sub. nom. Lorain Journal Co. v. FCC*, 351 F.2d 824 (D.C. Cir. 1965), *cert. denied*, 383 U.S. 967 (1966).

⁸ *EZ Sacramento, Inc.*, 15 FCC Rcd at 18257.

vague claim that they had “taken care of this problem a long time ago,” Eagle West provides no dates or evidence to prove that the EAS equipment for its Mesa, Arizona, system was installed or operational at the time of the May 16, 2005, and June 5, 2006, inspections. To the extent Eagle West installed and ensured the operation of the EAS equipment for its Mesa, Arizona, system after the inspections by the San Diego agent, we find that these efforts do not support a reduction in the assessed forfeiture amount. The Commission has stated in the past that a licensee is expected to correct errors when they are brought to the licensee’s attention and that such correction is not grounds for a downward adjustment in the forfeiture.⁹

8. We have considered the arguments raised by the Eagle West in its *Petition* and find they are unpersuasive. Therefore, we deny the Eagle West’s *Petition*, and affirm the Region’s *Forfeiture Order* finding Eagle West liable for a forfeiture in the amount of \$8,000.

IV. ORDERING CLAUSES

9. Accordingly, **IT IS ORDERED** that, pursuant to Section 405 of the Communications Act of 1934, as amended,¹⁰ and Section 1.106 of the Commission’s Rules,¹¹ the *Petition* for Reconsideration, filed March 5, 2007, by Eagle West Communications, Inc., **IS DENIED**.

10. **IT IS ALSO ORDERED** that, pursuant to Section 503(b) of the Act, and Sections 0.111, 0.311 and 1.80(f)(4) of the Rules,¹² Eagle West Communications, Inc., **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of eight thousand dollars (\$8,000) for violations of Section 11.35 of the Rules.¹³

11. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules within 30 days of the release of this *Order*. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for collection pursuant to Section 504(a) of the Act.¹⁴ Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Acct. No. and FRN No. referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 358340, Pittsburgh, PA 15251-8340. Payment by overnight mail may be sent to Mellon Bank /LB 358340, 500 Ross Street, Room 1540670, Pittsburgh, PA 15251. Payment by wire transfer may be made to ABA Number 043000261, receiving bank Mellon Bank, and account number 911-6106. Requests for full payment under an installment plan should be sent to: Associate Managing Director – Financial Operations, 445 12th Street, SW, Room 1-A625, Washington, D.C. 20554.¹⁵

⁹ *AT&T Wireless Services, Inc.* 17 FCC Rcd 21866, 21871-76 (2002).

¹⁰ 47 U.S.C. § 405.

¹¹ 47 C.F.R. § 1.106.

¹² 47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4).

¹³ 47 C.F.R. § 11.35.

¹⁴ 47 U.S.C. § 504(a).

¹⁵ *See* 47 C.F.R. § 1.1914.

12. **IT IS FURTHER ORDERED** that this Order shall be sent by regular mail and by certified mail, return receipt requested, to Eagle West Communications, Inc., at its address of record.

FEDERAL COMMUNICATIONS COMMISSION

George R. Dillon
Associate Chief, Enforcement Bureau